



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Tysons Enterprise West, LLC  
FOR  
Air Registration No. 71804**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the Virginia Department of Environmental Quality and Tysons Enterprise West, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the terms in this Consent Order have the meaning assigned to them in Va. Code §10.1-1300 *et seq.* and the Regulations for the Control and Abatement of Air Pollution (Regulations) at 9 VAC 5-10 *et seq.*

**SECTION C: Findings of Fact and Conclusions of Law**

1. Tysons Enterprise West, LLC (Tysons Enterprise) is a business entity authorized to do business in Virginia and references to Tysons Enterprise include its affiliates, partners, and subsidiaries. Tysons Enterprise is a "person" within the meaning of Va. Code § 10.1-1300.
2. Tysons Enterprise owns and operates a data center facility located at 7990 Quantum Drive in Vienna, Fairfax County, Virginia (Facility). The Facility is the subject of the minor New Source Review permit dated November 9, 2016 (Permit), which authorized the construction and operation of emergency diesel generator sets at the Facility.

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3. On March 16, 2023, a signed CY2022 Annual Update for Tysons Enterprise was received by DEQ. The document reported 1043.8 hours of operation for three (3) emergency engine generators, Cummins 1365DQGAB (Ref. Nos. 6, 7 & 8). On March 17, 2023, monthly run logs for all the Facility generators was submitted by Tysons Enterprise as requested by DEQ. Data in the monthly run logs showed that the subject emergency engine generators exceeded 100 hours run time in each consecutive 12-month period from April 2022 through February 2023, and that the 100-hour runtime exceedance will continue for each consecutive 12-month period through June 2023 even if the generators are not operated until July 1, 2023. The table below lists the hours of runtime for each of the subject generators based on data submitted by Tysons Enterprise:

<b>Month</b>	<b>Generator 6 12-Month Rolling Runtime (Hours)</b>	<b>Generator 7 12-Month Rolling Runtime (Hours)</b>	<b>Generator 8 12-Month Rolling Runtime (Hours)</b>
April 2022	110.7	109.8	109.4
May 2022	110.1	109.4	109.2
June 2022	110.6	109.9	109.8
July 2022	363.3	361.6	362.5
August 2022	358.3	356.4	357.5
September 2022	358.4	356.5	357.6
October 2022	347.4	346.6	347.7
November 2022	347.7	346.6	347.5
December 2022	348.0	346.6	347.9
January 2023	346.0	345.0	345.3
February 2023	346.0	344.8	345.2

4. Condition 6 of the Permit states: "Operating Hours - Each emergency diesel engine-generator set (Ref. Nos. 1-8) shall not operate more than 100 hours per year, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total operating hours for the most recently completed calendar month to the individual monthly totals for the preceding 11 months. (9 VAC 5-80-1180)
5. Based on generator runtime data submitted by Tysons Enterprise on March 17, 2023, DEQ calculated the 12-month rolling emissions of Nitrogen Oxides (as NO<sub>2</sub>) and Carbon Monoxide at the Facility from the operation of emergency generators.
- a. The data calculations showed that emissions of Nitrogen Oxides (as NO<sub>2</sub>) exceeded 9.30 tons in each consecutive 12-month period from July 2022 through February 2023 (see table below), and that the emission exceedance will continue for each consecutive 12-month period through June 2023 even if the generators are not operated until July 1, 2023.

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- b. The data calculations showed that emissions of Carbon Monoxide exceeded 0.62 tons in each consecutive 12-month period from July 2022 through February 2023 (see table below), and that the emission exceedance will continue for each consecutive 12-month period through June 2023 even if the generators are not operated until July 1, 2023.

<b>Month</b>	<b>12-Month Rolling Generator NO<sub>x</sub> Emissions (Tons)</b>	<b>12-Month Rolling Generator CO Emissions (Tons)</b>
July 2022	18.64	1.45
August 2022	18.14	1.42
September 2022	18.15	1.42
October 2022	17.26	1.36
November 2022	17.27	1.36
December 2022	17.29	1.36
January 2023	17.10	1.35
February 2023	17.09	1.35

6. Condition 10 of the Permit states: "Annual Engine Generator Emission Limits - Total emissions from all emergency diesel engine-generator sets (Ref. Nos. 1-8) shall not exceed the limits specified below:

<b>Ref. No.</b>	<b>Nitrogen Oxides (as NO<sub>2</sub>)</b>	<b>Carbon Monoxide (CO)</b>
1-8	9.30 tpy	0.62 tpy

These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition 6. (9 VAC 5-80-1180 and 9 VAC 5-50-260) NO<sub>2</sub>

7. 9 VAC 5-170-160(A) provides that the Department may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.
8. Va. Code § 10.1-1322(A) states that pursuant to the regulations adopted by the Department, permits may be enforced under the provisions of this chapter and failure to comply with any condition of a permit shall be considered a violation of this chapter.
9. On March 21, 2023, DEQ-NRO issued a Notice of Violation (NOV No. ANRO002465) to Tysons Enterprise for exceeding its annual 12-month rolling generator runtime limit of 100 hours per year for each permitted generator and exceeding its annual 12-month

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rolling emission limits of Nitrogen Oxides (as NO<sub>2</sub>) (9.30 tons per year) and Carbon Monoxide (0.62 tons per year) from the operation of emergency generators.

10. On March 28, 2023, DEQ staff and representatives of Tyson's Enterprise had a conference call to discuss the NOV, Tyson's Enterprises' plans for corrective actions, and enforcement proceedings. On April 7, 2023, Tyson's Enterprise submitted a written NOV response to DEQ.
11. Based on the CY2022 annual update report submitted by Tyson's Enterprises, the generator run log submitted by Tyson's Enterprise on March 17, 2023, the NOV issued to Tyson's Enterprises on March 21, 2023, the NOV conference call held on March 28, 2023, the written NOV reply submitted by Tyson's Enterprise on April 7, 2023, and related correspondence between DEQ and representatives of Tyson's Enterprise, the Department concludes that Tyson's Enterprise has violated Conditions 6 and 10 of the Permit as described above.
12. In order for Tyson's Enterprise to return to compliance, DEQ staff and representatives of Tyson's Enterprise have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Department orders Tyson's Enterprise, and Tyson's Enterprise agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$27,988.56** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Tyson's Enterprise shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Tyson's Enterprise shall be liable for attorneys' fees of 30% of the amount outstanding.

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### **SECTION E: Administrative Provisions**

1. The Department may modify, rewrite, or amend this Order with the consent of Tyson's Enterprise for good cause shown by Tyson's Enterprise, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ANRO002465 dated March 21, 2023. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tyson's Enterprise admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tyson's Enterprise consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tyson's Enterprise declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Tyson's Enterprise to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tyson's Enterprise shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Tyson's Enterprise shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tyson's Enterprise shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when

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circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tyson's Enterprise. Nevertheless, Tyson's Enterprise agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Tyson's Enterprise has completed all of the requirements of the Order;
  - b. Tyson's Enterprise petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Tyson's Enterprise.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tyson's Enterprise from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tyson's Enterprise and approved by the Department pursuant to this Order are incorporated into

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this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Tyson's Enterprise certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Tyson's Enterprise to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tyson's Enterprise.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Tyson's Enterprise voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Richard C. Doucette, CPG, Regional Director  
Department of Environmental Quality


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Tyson's Enterprise West, LLC voluntarily agrees to the issuance of this Order.

Date: 6/8/2023 By: , CDCO  
(Person) (Title)  
Tyson's Enterprise West, LLC

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## **APPENDIX A SCHEDULE OF COMPLIANCE**

Tyson's Enterprise West, LLC shall:

1. Starting July 10, 2023, and on the 10<sup>th</sup> day of each month thereafter until the Facility returns compliance with the 12-month rolling annual total of 100-hours of runtime for each generator at the Facility, submit to DEQ an updated spreadsheet of monthly runtime data for each of the Facility generators (Ref. Nos. 1-8).
  - a. If a return to compliance with the 12-month rolling annual total of 100-hours of runtime for each generator at the Facility is not achieved by September 1, 2023, then by September 15, 2023, submit to DEQ a plan and schedule of corrective actions (Plan) to return and maintain compliance with the 12-month rolling annual total of 100-hours of runtime for each generator at the Facility.
  - b. Respond to any comments or questions from DEQ regarding the submitted Plan within 14 calendar days of the date of the correspondence.
  - c. Upon DEQ approval of the Plan, the Plan shall be an enforceable part of this Order and Tyson's Enterprise shall begin implementation of the Plan in accordance with the schedule contained therein.
2. Unless approved in writing by DEQ at a later date, a return to compliance, including completion of all items required by a Plan approved by DEQ if applicable, shall be completed no later than May 1, 2024.
3. In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Tyson's Enterprise, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
4. Unless otherwise specified in this Order, Tyson's Enterprise shall submit all requirements of Appendix A of this Order to DEQ-NRO Enforcement staff via email.